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AN
ANSWER

To the *Seditious and Scandalous*
PAMPHLET,
ENTITLED,
The Tryal of *W. Penn* and *W. Mead*,
at the Sessions held at the *Old Baily*,
London, the 1, 3, 4, 5, of *Sept.* 1670.
CONTAINED
In FOUR SECTIONS.

SECT. I. *The Design of the Libellous Pamphlet discovered.*

II. *The Scandals against the then Lord Mayor,
Sir Thomas Bludworth, and Sir John Hovel
Recorder, Answered.*

III. *The Justice and Honour of that Court Vindicated,
by a True and Impartial Relation of that
whole TRYAL.*

IV. *The Fining of that Jury that gave two contrary
Verdicts justified, to prevent a Failure of
Justice in LONDON.*

Jude, Verse 8.

These filthy Dreamers, defile the Flesh, despise Dominions, speak evil of Dignities.

Verse 19.

These be they, who separate themselves, sensual, having not the Spirit.

Written by S. S. a Friend to JUSTICE, and Courts of JUSTICE.

LONDON, Printed by W. G. 1670.

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By Saml. Starling
 Sect. I. Smith Anti 2. 209

*The Design of the Libellous Pamphlet
 discovered, by way of Preface, to the
 Impartial and Ingenious Reader.*



Emper ego Auditor tantum? Nunquam reponam? Can it be, that a dumb Child can stand by and see a Traitor about to assassinate his Sovereign, and not cry out, *Miles noli Regem ferire!* (Do not kill the King!) Or can, or ought I to be silent, and hear a turbulent and inhumane sort of People, called *Quakers*, in a printed Book, by them falsely Entituled, *The Peoples ancient and just Liberties asserted, in the Tryal of William Penn and William Mead at the Sessions held at the Old Baily in London, the first, third, fourth, fifth of September, 1670.* Which Book I have great reason to believe was composed by *William Penn* the half *Quaker*, and therefore can give it no other name, but *The Second Part* to his Blasphemous Treatise called *The Sandy Foundations shaken*; for it's no wonder, that if he, who could daringly Blaspheme the Holy Trinity in that Book, should not blush to villifie and contemn the Kings Court, and falsely scandalize and reproach the Kings Justices, and revile all Methods of Law, and Forms of Indictments, calling them *detestable Juggles*,

and stiling this particular Indictment a *Romance Indictment*, fol. 29. sect. 4. and his Brother *William Mead* to the like purpose stiles this Indictment, a *bundle of stuff, Lyes, and Falshoods*, fol. 13. Penn's impudency carrying him still further, to endeavour in a popular way to subject the Fundamental Laws of the Land, impudently asserting in his Preface to the said Book, *that the Jury were the proper Judges both of Law and Fact*, vid. fol. 3. And Penn being for his turbulency and impertinency commanded to be put into the Bail-dock, exclaimed with a loud voice to the Jury, *This I leave upon your Consciences, who are of the Jury, [and my sole Judges,] &c.* vid. fol. 12.

Now Gentlemen of the long Robe look to your selves, and your *Westminster-Hall*: If these learned Reformers of Religion shall likewise Reform your Laws and Methods of Proceedings (as doubtless they design it) and make twelve Jury-men, eleven of which it's possible can neither write nor read, to be the sole Judges both of Law and Fact; farewell then to your great Acquisitions, your Year-books then will be out of date, and an *Ouster* will be put to your Books of *Entries*. These are the Beasts of *Ephesus*, that the late Lord Mayor, Recorder, and Bench of Justices have been contending withall; the Court asserting the Jury to be Judge of the Fact only, and that it was the Courts Prerogative to judge the Law, according to the old Maxim, *Ad questionem juris respondent Judices, ad questionem facti respondent Juratores*. And doth not *Magna Charta* say in effect as much? (which they so much glory in for their own Ends, although when it toucheth them in point of observing the Laws of the Holy Church and Gods Worship, they will call it *Magna Fartha*,

Partha, or something worse.) Doth not the Great Charter made Anno 9. Hen. iij. Chap. 29. say, That no Freeman shall be taken, or imprisoned; nor be disseized of his Freehold, or Liberties, or free Customs, or be Out-lawed, or Exiled, or any other ways destroyed; nor we shall not pass upon him, nor condemn him, but by lawful judgment of his Peers, [or] by the Law of the Land. This [or] is disjunctive, or copulative; if disjunctive, then it must imply some other Judges besides the Jury of twelve Men, which are called the Peers or Equals; if it be taken copulative (or for and) it still implies another Jurisdiction besides that of the Peers, and *per Legem terræ* in that place cannot (as this Novice of the Law doth insinuate) be understood to be the Tryal of the Jury only, but to be the Tryal both of Judge and Jury, according to that Maxim, *Ex facto jus oritur*: Therefore the Form of Entry of the Judgment is *Ideo consideratum est per curiam*, Vid. Coke's Institutes, lib. 2. cap. 12. sect. 234. fol. 154, 155. If the Law be as this Youngster would have it, viz. that the Jury is both Judge of Law and Fact, and that the Kings Justices cannot Fine for Contempt of the Court, nor correct the Corruption or Misdemeanor of Jury-men, nor inform their Ignorance, nor rectifie their Mistakes; the Justices in Oyer and Terminer have that Name for nothing, and the Justices will be but Cyphers, and sit there only to be derided and villified by every saucy and impertinent Fellow.

Thus you see, Gentlemen, if these things take place, they will not only do as their Brethren, the late Reformers of Law and Religion, turn the Laws into English, but turn the Judges and Juries also out of Westminster-Hall, and set up a High Court of Justice of Saints; and

and this *John of Leyden*, together with his Brethren the *Quakers*, (who esteem themselves the Saints) shall judge the World: Which God for his Name Sake prevent.

Sic precatur serio S. S.



S E C T. II.

The Libellous Scandal against the then Lord Mayor, Sr. Thomas Bludworth, Sr. John Hovel, Recorder, Answered and Refelled.

Jude 9. Yet Michael the Archangel, when contending with the Devil, he disputed about the Body of Moses, durst not bring against him a railing Accusation; but said, The Lord rebuke thee.

Verse 10. But these speak evil of those things which they know not.

THese People called *Quakers* (if they are to be believed) will tell you, they have this Angelical Spirit, the Meekness of *Moses*, the Patience of *Job*, and all other Graces. But the contrary appears, fol. 57. of *William Penn's Book*. Vide this Passage.

But above all, Dissenters had little reason to have expected that Boarish Fierceness from the Mayor of London, when

when they consider his eager prosecution of the Kings Party under Cromwel's Government, as thinking he could never give too great a Testimony of his Loyalty to that new Instrument ; which makes the old Saying true, That one Renegado is worse than three Turks.

A high Charge against Sr. Samuel Starling, then Lord Mayor, (if true) *Cujus contrarium verum* ; and therefore a Railing Acufation : And that Light, which is (as they say) within them, (by which they are acted, and speak, as they pretend) is the Spirit of the Devil, the Father of Lies. But in regard this Libel chargeth the then Lord Mayor of Disloyalty to his King, and of Unkindness to the true-hearted Royalists ; I think it necessary, for his Vindication, to desire the Courteous Reader to enquire of S. Edward Deering, the Dean of S. Pauls Dr. Sancroft, Dr. Whitchcocke, Mr. Christopher Flower Minister of Lothbury, and of Francis Pemberton Esquire of the Middle Temple, who all can bear witness of his Loyalty, when he was at Cambridge ; and that he manifested the same in the Schools, and upon all occasions. And in the Years 1643, 1644, 1645, when Loyalty was most out of Fashion ; and was at last compelled to leave the University, and his hopes of preferment that way, he utterly refusing to take the Scottish Covenant.

In the Years 1646, 1647, 1648, 1649, he applied himself to the Study of the Laws at Grays-Inn ; and after he had performed his Exercises, he could not be admitted to the Bar, because he utterly refused to subscribe the Cursed Engagement ; witness Cornelius Hooker Esq; Nicholas Jacob Esq; both Barristers of Grays-Inn, and his Contemporaries. From 1650, until His Majesties Restauration,

stauration, he was a Trader in the City; and how he demeaned himself in those *Cromwellian* Times, all that knew him, will bear Testimony, that he walked *Antipodes* to the *Genius* of that age, to the endangering of his Life and Estate. His Majesty being by Gods providence restored, he was esteemed for his Loyalty a fit Person to be of the Jury upon the Kings Judges; and passed a *Juror* upon no less than 18. of those assassinating Traytors.

But why do I endeavour to vindicate his Loyalty; which was never questioned by any, but by these Sceptical *Quakers*, whose whole business is to asperse our Religion, Laws, and all men that are not of their cursed Principles?

But I shall make this fair Offer for *Sr. Samuel Starling*, and undertake for him, That if *William Penn* can make out that the late Lord Mayor ever wronged one of the Kings Friends either in Body, Goods, or Good Name, one penny, that he shall restore to that Gentleman, whosoever he be, a Thousand pounds for every penny-worth of wrong.

But I suppose this wild rambling Colt *William Penn* mistakes when he chargeth these things upon the late Lord Mayor, he means his own *Seir* deceased, who from a Captain, was made *Olivers* High Admiral for his great Service in promoting that New Instrument; who afterwards did eminent Service for the *English* Nation at *Hispaniola*, when he delivered up the Flower of the *English* Souldiers a Sacrifice to the Cow-Killers.

This was a *Renegado* worse than three *Turks*; that performed such excellent Service in the late *Dutch* Wars, in plundering the two *East-India Dutch* Ships of the Prize-Goods; for which he was turned out of the House

House of Commons ; it is hoped, that he leaving so great an Estate of -- just gotten Goods to so conscientious a Son as this *William Penn* pretends himself to be, that the tender-Conscienc'd Youth will make satisfaction to His Majesty : *Taceo cetera ; De Mortuis nil nisi Bonum.*

The *Libeller* proceeds to asperse Sir *Thomas Bludworth*, *vid. fol. 57, 58.* Alderman *Bludworth* (saith he) being conscious to himself of his partial kindness to the Popish Friars ; hopes to make amends by his zealous prosecution of the poor Dissenters ; for at the same Sessions he moved to have an Evidence (of no small quality) against *Harrison*, the Frier, sent to Bridewel and whipt ; that he was earnest to have the Jury fined and imprisoned, because they brought not the Prisoners guilty, for only worshipping their God : Whence it may be easie to observe, That Popish Friars and Prelatical Persecutors are meer Confederates.

This likewise is a Railing Accusation, false and malicious : That worthy Knight never moved at that Sessions to have an Evidence against *Harrison* the Frier, sent to *Bridewell*, and whipt, as this *Libeller* chargeth him ; neither was it ever proved at the Sessions, That the idle prating Fellow *Harrison* was a Frier, or ever attempted to set the City on Fire, as was falsely suggested ; but it was proved, that he had raised a rumour that the City would be burnt, whereby great fears and terrours was upon the spirits of the people ; for which cause, he was deservedly Fined, Whipt, and Pillored by the Court.

I could heartily wish, That these Libelling, Lying, and Discontented People, were as free of the Design of putting this whole Kingdom into a Flame, as he was from the actual Firing of the City.

But the malice of this Accusation appears in the Inference

B

rence

nence the *Libeller* makes, viz. That Popish Friars, and Prelatical Persecutors, are meer Confederates. By which, the *Libeller* would perswade the too credulous World, that the honest, sober *Protestant*, who endeavoureth to put the Laws in Execution against seditious Meeters, are Persecutors: To which false, wicked, and divelish Accusation, I at present make no other reply, but what *Michael* did to the Devil, *The Lord rebuke thee*: The Lord in Heaven judge between us, and these lying discontented People.

The Accusation against the Recorder is twofold; first, that he should say, *That there would be a Law made the next Session of Parliament, That no man should have the protection of the Law, but such as conformed to the Church, fol. 68.* This Saying of the Recorders is falsely and maliciously recited; for he said, *That we shall not be always at this trade with you, you will find the next Session of Parliament there will be a Law made, That those that will not conform to the Law, shall not have the protection of the Law.* And is it not most reasonable, that they which would have protection, should give subjection? And was it not the Opinion of those blessed Saints, whose steps these men follow, when they made a Law, That those that would not subscribe the wicked Engagement, against King and House of Lords, should not have the benefit of the Law? Was not that Law then esteemed by Men of their Principles a blessed Law? And is not this *Lex Talionis*? *Nec lex est justior ulla, quam necis artifices arte perire suâ?* And would not such a Law, if the wisdom of Parliament think fit, save the Magistrates from a great deal of trouble, and take more effect upon these stubborn people, than all the Laws that

that have yet been made, or by the wit of man can be invented?

The second Accusation against the Recorder is, that he should say, *Till now I never understood the reason of the policy and prudence of the Spaniards, in suffering the Inquisition amongst them: And certainly it will never be well with us, till something like the Spanish Inquisition be in England.* The Inference the *Libellers* make is, *What does this but justify that Hellish Design of the Papists to have prevented the first Reformation.*

This is a wicked and uncharitable construction of the Recorder's words: These words do no ways justify the *Papists*, in preventing the first Reformation by the *Hellish Inquisition*.

If these *Libellers* had but the least grain of Charity, they would have construed the words *cum grano salis*, & *in mitiori sensu*, as the Rule of Charity directs all words to be construed; and they will admit of no other construction but this, *viz.* That if the *Papists* be so politick and prudent, by their *Inquisition*, to preserve and maintain their false Religion; surely it will be the *Protestants* prudence, to find ways for the preservation of their true Religion.

Quod Faxit DEVS.

S E C T. III.

*The Justice and Honour of that Court Vindicated,
by a True and Impartial Relation of that whole
Tryal.*

THe Trial of *William Penn* and *William Mead* at the
Old-Baylie, London, the 1st. 3^d. 4th. 5th. of Septem-
ber, 1670. being made publick by a *Libellers* hand, tend-
ing to the Dishonour of Justice and Courts of Justice,
with divers Scandalous and Malicious Observations
thereupon, I thought good, being an Eye and Ear wit-
ness of all that passed, to give a True and Impartial Re-
lation of that Affair, whereby the Justice, Candor and
Integrity of that Court towards the Prisoners, and the
Scornful, Abusive and Unbecoming Behaviour of the
Prisoners towards the Court, may be made manifest to
the world.

There being present,

Sr. <i>Sam Starling</i> , Kt. then L. Mayor.	} Sr. <i>R. Ford</i> , Kt & Ald. Sr. <i>J. Sheldon</i> , Kt & Ald. Sr. <i>John Smith</i> } She- Sr. <i>James Edwards</i> } riffs.
Sr. <i>John Robinson</i> , Kt.	
Sr. <i>Tho. Bludworth</i> , Kt. and Ald.	
Sr. <i>William Peake</i> , Kt. and Ald.	
Sr. <i>John Hovel</i> , Kt. and Recorder.	

I thought good to set down the Names of those Ju-
stices who were present at that Trial, *Honoris causâ*,
with all their Additions and Titles, that so the World
may know that the City of *London* wants not Worthy
Patriots, who dare call to Accompt these vile railing
Rabshes-

Rabshakeh's of this Age, who speak evil of our Religion and our God; and the rather, because the *Libeller* hath in a disgraceful way prefix'd their Names without any Additions, to his Narrative; thereby intending to make them odious to the People.

Cryer, O Yes, *Thomas Veeer*, — *Busshel*, *John Hammond*, *Charles Milson*, *Gregory Walklet*, *John Brightman*, *Will. Plumsted*, *Henry Henley*, *Thomas Damask*, *Henry Michel*, *William Lever*, *John Baily*.

The Form of the Oath.

You shall well and truly try, and true Deliverance make betwixt our Sovereign Lord the King, and the Prisoners at the Bar, according to your Evidence; So help you God.

The Indictment.

That *William Penn* Gent. and *William Mead* late of *London*, *Linnen-Draper*, with divers other persons to the Jurors unknown, to the number of three hundred, the 14th. day of *August*, in the 22th. Year of the King, about Eleven of the Clock in the Forenoon, the same day, with Force and Arms, &c. in the Parish of *S. Bennet Grace-Church*, in *Bridge-Ward*, *London*, in the Street called *Grace-Church-Street*, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the Peace of our said Lord the King; and the aforesaid *William Penn*, and *William Mead*, together with other persons, to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between

tween him and *William Mead* before made, and by abetment of the aforesaid *William Mead*, then and there, in the open street, did take upon himself to preach and speak, and then and there did preach and speak unto the aforesaid *William Mead*, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of people in the street aforesaid, then and there, along time did remain and continue, in contempt of the said Lord the King, and of His Law, to the great disturbance of His Peace, to the great terror and disturbance of many of His Liege People and Subjects, to the ill example of all others, in the like Case Offenders, and against the Peace of the said Lord the King, His Crown and Dignity.

What say you, *William Penn* and *William Mead*, are you Guilty as you stand Indicted, in manner and form as aforesaid, or not Guilty?

Penn. It is impossible, that we should be able to remember the Indictment *verbatim*, and therefore we desire a Copy of it, as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Penn. I am unacquainted with the formality of the Law, and therefore, before I shall answer directly, I request two things of the Court; first, that no advantage may be taken against me, nor I deprived of any benefit which I might otherwise have received; secondly, that you will promise me a fair Hearing, and liberty of making my Defence, and that the Court would be my Council.

Court. No advantage shall be taken against you; you shall

shall have liberty; you shall be heard; this is an Indictment for Trespass, therefore you may have what Council you please.

Penn. Then I plead, not Guilty in manner and form.

Clerk. What saist thou, *William Mead*, art thou Guilty in manner and form as thou stand'st Indicted, or not Guilty?

Mead. I shall desire the same liberty as is promised *William Penn*.

Court. You shall have it.

Mead. Then I plead, not Guilty in manner and form.

The Third of September, 1670. the Court sate.

Cryer. Oyes, &c.

Cler. Bring *William Penn* and *William Mead* before the Barr.

Mayor. Sirrah, Who bid you put off their Hats? Give them their Hats again.

Nota. The Prisoners in stubborn manner refusing to take their Hats, they were put on again by the same person, before they came into the Court.

Nota. The Court observing, that the Prisoners standing on the Leads behind the Barr, with their Hats on, facing the Court all that day, as it were daring the Court to a Tryal, so that the Court and all the Spectators looked upon them, as offering a great Affront to the Honour of His Majesties Court; the Justices were resolved to chastise them for the same.

The Prisoners standing before the Barr with their Hats on, the Recorder said:

Rec. Do you know where you are?

Penn. Yes.

Rec.

Rec. Do you not know it is the Kings Court?

Penn. I know it to be a Court, and I suppose it to be the Kings Court.

Rec. Do you not know there is respect due to the Court?

Penn. I do so.

Rec. Why do you not pull off your Hat then?

Penn. Because I do not believe that to be any respect.

Rec. Well, the Court sets Forty Marks a piece on your Heads, as a Fine for your Contempt of the Court.

Penn. I desire it might be observed, that we came into the Court with our Hats off, (that is, taken off,) and if they have been put on since, it was by Order from the Bench; and therefore not we, but the Bench ought to be Fined.

Nota. This is a great Falshood, for their Hats were put on behind the Barr, before they came into the Court.

Mead. I have a Question to ask the *Recorder*: Am I Fined also?

Rec. Yes.

Mead. I desire the Jury, and all people, to take notice of the injustice of the *Recorder*, who spake to me to pull off my Hat, and yet he hath put a Fine on my Head. O fear the Lord, and dread his power, and yield to the guidance of his holy Spirit, for he is not far from every one of you.

Nota. This is insignificant Canting.

The Jury sworn again.

Nota. It was by Sir *John Robinson* observed, that — *Bushel*, the tender conscienced Jury-man, made an offer to kiss the Book, but did not; wherefore he was called to by the Court to be sworn again.

The

The Clerk read the Indictment as aforesaid.

Cler. Call *James Cook* into the Court ; give him his Oath. *He being sworn, he gave his Evidence.*

Cook. I was sent for from the Exchange, to disperse a Meeting in *Gracious-street*, where I saw *Mr. Penn* speaking to the people, but I could not hear what he said, because of the noise ; I endeavoured to make way to take him, but I could not get to him for the crowd of people ; upon which *Mr. Mead* came to me, and desired me to let him go on, for when he had done, he would bring *Mr. Penn* to me.

Court. What number do you think might be there ?

Cook. About three or four hundred people.

One Read, a Constable, being sworn, was asked :

What do you know concerning the Prisoners at the Barr ?

Read. My Lord, I went to *Gracious-street*, where I found a great crowd of people, and I heard *Mr. Penn* preach to them : I endeavoured with my Watchmen to get at *Mr. Penn* to pull him down, but I could not, the people kicking my Watchmen and my self on the shins : I saw likewise *Captain Mead* speaking to *Lieutenant Cook*, but what he said I cannot tell.

Mead. What did *William Penn* say ?

Read. There was such a great noise, that I could not tell what he said.

Mead. Jury, observe this Evidence, he saith he heard him preach, and yet saith, he doth not know what he said.

Court. What number do you think might be there ?

C

Read.

Read. About four or five hundred.

Pen. I desire to know of him what day it was.

Read. The 14th. day of *August*.

Pen. Did he speak to me, or let me know he was there?
for I am very sure I never saw him,

Crier. Call *Whiting* into the Court.

Court. Give him his Oath.

Whiting. My Lord, I saw a great number of People, and Mr. *Penn* I suppose was speaking, I saw him make a motion with his Hands, and heard some noise, but could not understand what he said; but for Captain *Mead*, I did not see him there.

Record. What say you, Mr *Mead*, were you there?

Mead. It's a Maxim in your own Law, *Nemo tenetur accusare seipsum*. Which if it be not true *Latine*, I am sure it's true *English*, That *no man is bound to accuse himself*: And why dost thou offer to ensnare me with such a Question? Doth not this shew thy Malice? Is this like a Judge that ought to be Council for the Prisoner at the Bar?

Record. Sir, Hold your Tongue, I did not go about to ensnare you.

Penn. I desire we may come more close to the point; and that Silence be commanded in the Court. [*Silence being made.*]

Pen. We confess our selves to be so far from recanting or declining to vindicate the Assembling of our selves to Preach, Pray, or worship the Eternal, Holy, Just God, that we declare to all the World, That we do believe it to be our indispensable Duty, to meet incessantly upon so good an Account, nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God who made us.

Nota As clear Evidence as ever was offered to any *Jury*, two Witnesses prove the Fact against both the Prisoners, and the Prisoners confess the whole Matter in effect, and justifie themselves, and declare they will do the like again, whatsoever Laws the King and Parliament can provide against the same. O confident Impudency! Surely both King and Parliament will take notice of *Penn's* Arrogancy.

Sr. Rich. Browne. You are not here for worshipping of God, but for breaking the Law.

Mead. Browne, What have you to do there? you are no *Justice*: Come off the Bench.

Brown. Sir, I am a *Justice*, and you are an Impudent Fellow.

Pen. I affirm I have broken no Law; nor am I guilty of the Indictment laid to my Charge; And to the end the Bench, the Jury, and my self, with those that hear us, may have a more direct understanding of this Procedure, I desire you would let me know by what Law it is you prosecute me.

Rec. The Indictment is grounded upon the *Common Law*.

Pen. Where is that *Common Law*?

Rec. You must not think I am able to run up so many Years, and so many Adjudged Cases, which we call *Common Law*, to answer your Curiosity.

Pen. If it be *Common*, it should not be so hard to produce.

Nota. How Mr. *Penn* plays upon the Word *Common*.

Mayor It's call'd *Common Law*, to distinguish it from the *Statute-Law*: Now the *Common Law* is Common Right, or *Lex Rationis*, imprinted in every mans Understanding;

derstanding ; and the publick Peace is the Law's Darling, and every great Assembly of people may endanger the publick Peace ; and therefore the Law esteems them unlawful Assemblies, unless they have a Warrant for their Assembling.

Recor. Sir, Speak to the Indictment ; you are now upon Matter of Fact, which Fact you have heard proved against you ; you are to answer it : If the Fact be found against you, you may then speak to the Matter of Law, in Arrest of Judgment, and you shall be heard.

Pen. I say, it is my place to speak to Matter of Law ; I am arraign'd a Prisoner, my Liberty, which is next to Life it self, is now concerned ; you are many Mouths and Ears against me ; and if I must not be allowed to make the best of my Case, it is hard ; unless you shew me, and the people the Law you ground your Indictment upon, I shall take it for granted, your proceedings are meerly Arbitrary.

Rec. You have been told, if the Fact be found against you, it is time then to dispute the Law. The Question now is, whether you are guilty of the Indictment.

Pen. I have asked but one Question, and you have not answered me ; though the Rights and Priviledges of every *Englishman* be concerned in it.

Rec. If I should suffer you to ask Questions till to Morrow Morning, you would be never the wiser.

Pen. That is according as the Answers are.

Rec. Sir, We must not stand to hear you all night.

Mayor. You have been answered your Question ; it's time to dispute the point of Law, if you are found guilty of the Fact. But your Design is to affront the Court, and amuse the people ; you have not Confidence enough to deny the Fact so plainly prov'd against you ; but you have

have Impudence enough to abuse the Court by your unreasonable Discourse.

Pen. I design no affront to the Court, but to be heard in my just Plea ; and I must plainly tell you, That if you will deny me *Oyer* of the Law, which you suggest I have broken, you do at once deny me an acknowledged Right ; and evidence to the whole world, your resolution to sacrifice the priviledges of *Englishmen* to your Sinister and Arbitrary Designs.

Rec. Take him away ; if you take not some course with this pestilent Fellow, to stop his Mouth, we shall not be able to do any thing to night.

Mayor. Take him away, take him away ; turn him into the *Bail-Dock*.

Pen. Is this Justice or true Judgment ? Must I therefore be taken away, because I plead for the Fundamental Laws of *England* ? However, this I leave upon your Consciences, who are of the *Jury*, (and my sole Judges) That if these Ancient Laws, which relate to Liberty and Property (and are not limited to particular perswasions in Matters of Religion) must not be indispenfably maintained and observed, who can say, he hath right to the Coat upon his Back ? &c.

Rec. Be silent there.

Pen. I am not to be silent in a Case wherein I am so much concerned.

Nota, Mr. *Penn* makes it to be a Fundamental Law, viz. The *Jury* to be his Sole Judges ; when by the Fundamental Laws all Trials are to be by Judge and *Jury* ; and never questioned by any before Mr. *Penn* (the New Broacher of Old Heresies) disputed the same. And this is the Reason he so often calleth for *Oyer* of the Law, upon which the Indictment is grounded, that so the *Jurors* might measure the Truth of the Indictment, and Guilt of the Fact by the knowledge of that Law. See his Book, fol, 30.

Mead.

Mead. You men of the *Jury*, here I do now stand, to answer to an Indictment against me, which is a Bundle of Stuffe, Lies and Falshoods; for therein I am accused that I met *vi & armis*; Time was, when I had freedom to use a Carnal Weapon; and then I thought I feared no man; but now I fear the Living God; and dare not make use thereof.

Mayor. Believe you who can; your Brethren the *Munsterians* pretended as much.

Mead. I say I am a peaceable man; therefore it is a proper Question what *William Penn* demanded in this Case, an Oyer of the Law, on which the Indictment is grounded.

Rec. I have made Answer to that already.

Mead. Turning his Face to the *Jury*, saith,

You men of the *Jury*, who are my Judges, if the Recorder will not tell you, what makes a Riot, a Rout, or an Unlawful Assembly; Coke tells us what makes a Riot, a Rout, and an Unlawful Assembly: *A Riot is, when three or more are met together, to beat a Man, or to enter forcibly into another mans Land, to cut down his Grass, his Wood, or break down his Pales.*

Rec. Yes, and to do any other Unlawful Act. But I thank you, Mr. *Mead*, That you will tell me what the Law is; [*pulling off his Hat.*]

Mead. Thou maist put on thy Hat, I have never a Fee for thee now.

Mayor. An intollerable Affront! Mr. *Mead*, I thought you had been a meek man, as you profess. You deserve to have your Tougue cut out for affronting the Court, as well as the Prisoner had his Hand cut off that threw a Stone at the Court.

Rec. If you discourse on this manner, I shall take occasion against you.

Nota,

Nota. Mr. Mead being put into the Bail-Dock, the Recorder proceeded to give the Jury their Charge.

Record. You have heard what the *Indictment* is ; it is for Preaching or Speaking to the people, and drawing a Tumultuous Company after them : there are three Witnesses that have proved this ; That *Penn* did preach there, that Mr. Mead was there, and did abet him, and did allow of the same ; now we are upon the matter of Fact, which you are to keep to and observe as what hath been sworn at your peril.

Pen. I appeal to the Jury, who are my Judges, whether the proceedings of the Court are not most Arbitrary, and void of all Law ; in offering to give the Jury their Charge in the absence of the Prisoners : I say, it's directly opposite to, and destructive of the undoubted Right of every *English* Prisoner, as *Coke* in the 2 *Inst.* 29. on the Chap. of *Magna Charta* speaks.

Rec. Why, why you are present, you do hear, do you not ?

Pen. No thanks to the Court, that commanded me into the Bail-Dock.

Nota. *Penn* made such an uncivil noise, that the Court could not give the Jury the Charge ; he was therefore put into the Bail-Dock, which stands even with the Bar, and the Prisoners might hear the Charge there as well as a Prisoner might hear at the Bar : This therefore was a causeless Exclamation.

Mead. Are these according to the Rights and Privileges of *Englishmen*, that we should not be heard, but turned into the Bail-Dock, for making our Defence ; and the Jury to have their Charge given them in our Absence.

Rec. Take them away into the Hole ; to hear them talk

talk all night, as they would, that I think doth not become the Honour of the Court; and I think that you, (*i. e.*) the *Jury*, your selves, would be tired out, and not have patience to hear them.

Nota. The *Jury* withdrew for an hour and half; eight came down agreed, but four remain'd above; the Court sent for them, and they accordingly came down: The four Dissenters said, *They were not agreed.*

The Recorder speaking to Mr. Bushel, said

Rec. Sir, You are a Cause of this Disturbance, and manifestly shew your self an Abettor of Faction. I shall set a Mark on you.

Sir J. Robinson. Mr. *Bushel*, I have known you this fourteen years; you have thrust your self upon this *Jury*, because you think there is some work for you; I tell you, you deserve to be indicted more than any man that hath been brought to the Bar this day.

Bush. No Sir *John*, There were threescore before me, and I would willingly have got off, but could not.

Sir Tho. Bludw. I said, when I saw Mr. *Bushel*, what I see is come to pass; for I knew he would never yield. Mr. *Bushel*, we know what you are.

Mayor. You are an Impudent Fellow, I will put a Mark upon you.

Nota. The *Jury* was sent up until agreed, and some considerable time after they returned, Silence call'd, the *Jury* was called over.

Cler. Are you agreed upon your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. Look upon the Prisoners at the Bar; How say you?

you? Is *William Penn* guilty of the Matter whereof he stands Indicted in manner and form, or not guilty?

Fore-m. Guilty of speaking in *Gracious-Street*.

Court. Is that all?

Fore-m. That is all I have in Commission.

Record. You had as good say nothing.

May. What, was it not an unlawful Assembly? You mean he was speaking to a Tumult of People there?

Fore-m. My Lord, this was all I had in Commission.

Nota. Six or seven of the *Jury* did agree to the *Mayors* Question; upon which *Bushel*, *Hammond*, and two others opposed themselves, they allowed of no such Word as an *Unlawful Assembly* in their Verdict.

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jury. We have given in our Verdict, and can give in no other.

Rec. Gentlemen, you have not given in your Verdict, this is no Verdict in Law; and you had as good say nothing; therefore go and consider it again once more, that we may make an end of this troublesome business.

Jury. We desire we may have Pen, Ink and Paper.

Nota. The Court adjourns for half an hour; The Court returns, and the *Jury* come down likewise.

The Prisoners are brought to the Bar: The *Jury* being called over,

Cler. Are you agreed of your Verdict?

Jury. Yes.

Cler. Who shall speak for you?

Jury. Our Fore-man.

Cler. Look upon the Prisoners; what say you? Is

D

William

William Penn guilty in Manner and Form, as he stands Indicted, or not guilty?

Fore-m. Here is our Verdict; holding forth a piece of Paper to the Clerk of the Peace, which follows;

VVE the *Jurors*, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Assembly met together in *Gracions-Street*, the 14th of *August* last 1670. And that *William Mead* is not guilty of the said Indictment.

<i>Thomas Veer,</i>	<i>Fore-man.</i>	<i>Charles Milson.</i>
<i>Edward Busbel.</i>		<i>Gregory Walklet.</i>
<i>John Hammond.</i>		<i>John Baily.</i>
<i>Henry Henley.</i>		<i>William Lever.</i>
<i>Henry Michel.</i>		<i>James Damask.</i>
<i>John Brightman.</i>		<i>William Plumsted.</i>

Nota, Some of the Court were for accepting this Verdict; but the Evidence being as plain and full against *Mead* as against *Penn*, the Court refused the Verdict.

Mayor. What will you be led by such a silly Fellow as *Busbel*? a Canting Fellow; I warrant you, you shall come no more upon *Juries* in haste: You are a Fore-man indeed; I thought you had understood your place better.

Record. Gentlemen, You shall not be dismiss'd till we have a Verdict; and by the Law of *England* you are to be lock'd up without Meat, Drink, Fire or Tobacco; you do abuse the Court; we will have a Verdict by the help of God.

Pen.

Penn. My *Jury* (who are my Judges) ought not to be thus menaced; their Verdict ought to be free, and not compelled; the Bench ought to wait on them, and not forestall them; I do desire that Justice may be done me, and that the Arbitrary Resolves of the Bench may not be made the measure of my *Juries* Verdict.

Rec. Stop that prating Fellows mouth; or put him out of the Court.

Nota, How Mr. *Penn* abuses the Court; the Court are by Law Judges, what is a Verdict in Law, and what is not a Verdict in Law.

May. Gentlemen, You have heard that Mr. *Penn* Preached, that he gathered thereby a Tumult of People; that Mr. *Mead* was there, and abetted him; and that they not only disobey the Martial Power, but Civil also.

Penn. It's a great Mistake; we did not make the tumult, but they that interrupted us. We met not there with a Design to disturb the Civil peace, since (1.) We were with force of Arms kept out of our lawful House; and met as near it as the Souldiers would give us leave. (2.) Because it was no new thing, but what was usual and customary with us; it's very well known we are a peaceable people, and cannot offer violence to any man.

Nota, A peaceable innocent People indeed, that when the King had seized the Meeting-House into His Hands, as by Law he might, they would come and break open the Doors, and there congregate, expressly against the Kings Command; and therefore there was a necessity of Souldiers to keep the Kings possession; they violently overpowering the Constable and his Watchmen; and it is proved, that these People at this time kicked and spurned the Constable and his Watchmen, he endeavouring to dissipate this Unlawful Assembly, as is sworn by *Read* the Constable.

Penn. The agreement of Twelve Men is a Verdict in Law, and such an one being given by the Jury, I require the Clerk of the Peace to record it, as he will answer it at his peril; and if the Jury bring in another Verdict contrary to this, I affirm they are perjur'd men in Law.

Bushel. Nor will we ever do it.

Nota, The Jury in Mr. Penn's opinion, and *Bushel's* both, are perjur'd men, for that at last they brought in a Verdict contradictory to this.

At this time some of the Jury complained to the Court, that the four men, viz. *Bushel* and *Hammond*, and the other two, would starve them, and that they had brought Strong-Water Bottles in their Pockets designedly.

Mayor. You are as strong as any of them; starve them, and hold your Principles.

Rec. Gentlemen, You must be contented with your hard Fare, let your Patience overcome it; for the Court is resolved to have a Verdict, and that before you can be dismiss.

Jury. We are agreed; we are agreed.

Nota, The Court having a respect to the health of the Jury, adjourned until Seven next Morning although it was Sunday; which otherwise they would not have done.

The Court meets accordingly, the Jury is called over.

Clerk. Are you agreed upon your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Fore man.

Clerk. Look upon the Prisoners at the Bar; Is *William Penn* guilty of the Matter whereof he stands Indicted?
Fore-m.

Fore-m. William Penn is guilty of speaking in *Gracious-street*.

Mayor. To an unlawful Assembly.

Busbel. No my Lord, we give no other Verdict than what we gave last night.

Mayor. You are a factious fellow, and a course ought to be taken with you.

Sir. Tho. Bludworth. I knew *Busbel* would never yield.

Busbel. *Sir Thomas*, I have done according to my Conscience.

Mayor. That Conscience of yours would cut my Throat.

Busbel. No my Lord, it never shall.

Mayor. But rather than you shall cut my Throat, I will in defence of my self cut yours first.

Record. He hath inspired the Jury, he has the Spirit of Divination; I will have a positive Verdict, or else you shall starve for it.

Penn. I will ask the Recorder one Question: Do you allow of the Verdict given of *William Mead*?

Rec. It cannot be a Verdict, for that you both were indicted for a Conspiracy; and one being found Not Guilty, and not the other, it could not be a Verdict.

Penn. If Not Guilty be no Verdict, then you make of the *Jury* and *Magna Charta* a Nose of Wax.

Mead. How! Is Not Guilty no Verdict?

Recor. No, it's no Verdict in this Case.

Penn. I affirm that the Consent of a *Jury* is a Verdict in Law. And if *William Mead* be not guilty, it consequently follows, That I am clear; for that I could not conspire alone.

The Jury return.

Crier. Oyes, &c. Silence in the Court.

Court. Call over the *Jury*.

Clerk. What say you, Is *William Penn* guilty of the Matter whereof he stands Indicted, in manner and form aforesaid, or not guilty?

Fore-m. Guilty of speaking in *Gracious-Street*.

Record. What is this to the purpose? I say, I will have a Verdict; and speaking to *Edward Busbel*, said, *You are a Factionous Fellow, I will set a Mark upon you, and whilst I have to do in the City, I will have an eye on you.*

Mayor. Have you no more wit than to be led by such a pitiful Fellow as *Busbel*? Were I of the *Jury*, rather than he should starve me, I would slit his Nose for him.

Penn. It is intolerable that my *Jury* should be thus menaced: Is this according to the Fundamental Laws?

Nota, This is the fourth time the *Jury* brought in this insignificant Verdict; viz. [*That they find Penn guilty of speaking in Gracious-Street*] and how this answers the Question, viz. [*What say you, Is William Penn guilty of the Matter whereof he stands Indicted, in manner and form, or not guilty?*] Let the world judge whether this be a Verdict or not. They thus often abusing the Court, made the displeasure of the Court against them; and surely not without cause.

Nota, *William Penn* made such a Noise in the Court, that the Court could not hear the *Jury*, nor the *Jury* the Court.

Record. My Lord, you must take a course with that same Fellow.

Mayor. Stop his mouth; Goaler, bring Fetters, and stake him to the Ground.

Nota,

Nota. Upon this Mr. *Penu* was very silent and quiet, although nothing was done to him.

Record. Till now I never understood the reason of the policy and prudence of the *Spaniards*, in suffering the Inquisition amongst them; and certainly it will never be well with us till some thing like unto the *Spanish* Inquisition be in *England*.

Nota, The *Jury* being commanded up again, the *Jury* refused.

The Recorder directing his Speech to the *Jury*, said,

Record. Gentlemen, We shall not always be at this Trade with you; you will find the next Session of Parliament, there will be a Law made, That those that will not conform to the Law, shall not have the protection of the Law.

Jury. We ought not to be returned, having all agreed, and set our hands to the Verdict.

Record. Your Verdict is no Verdict in Law; you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve.

Jury. We have given in our Verdict, and all agreed to it, and if we give in another, it will be a force upon us to save our lives.

Nota. These Men were very like to be starved, when they had Roast beef; Capons, Wine and Strong-drink sent them (as is ready to be proved) during the time they were considering of their Verdict.

Officer. My Lord, they will not go up.

Nota. The Court spoke to the Sheriff, and he came from his Seat, and said,

Sheriff.

Sheriff. Come Gentlemen, you must go up ; you see I am commanded to make you go.

Crier. Oyes, &c. The Court adjourns until seven of the clock next morning.

The Court sits the fifth of September, 1670.

Clerk. Set *William Penn* and *William Mead* to the Bar : Are you all agreed of your Verdict ?

Jury. Yes.

Clerk. Who shall speak for you ?

Jury. Our Fore-man.

Clerk. Look upon the Prisoners : What say you ? Is *William Penn* Guilty of the Matter whereof he stands Indicted in manner and form, &c. or Not Guilty ?

Fore-m. Here is our Verdict in Writing, and our hands subscribed to it.

Clerk. How say you ? Is *William Penn* Guilty, &c, or Not Guilty ?

Fore-m. Not Guilty.

Clerk. How say you ? Is *William Mead* Guilty, &c. or Not Guilty ?

Fore-m. Not Guilty.

Clerk. Then hearken to your Verdict ; you say, That *Will. Penn* is not Guilty in manner and form, as he stands Indicted : You say that *Will. Mead* is not Guilty in manner and form as he stands Indicted : And so you say all ?

Jury. Yes, we do so.

Record. I am sorry, Gentlemen, you have followed your own wilful Opinions, rather than the good and wholesom advice which was given you ; God keep my Life out of your hands : But for this, the Court Fines you Forty Marks a Man, and Imprisonment until paid.

Penn.

Penn. I demand my Liberty, being freed by the Jury.

Mayor. No, you are in for your Fines.

Penn. Fines! for what?

Mayor. For Contempt of the Court.

Penn. I ask, If it be according to the Fundamental Laws of *England*; That any *Englishman* should be Fined or Amerced, but by the judgment of his Peers or Jury?

Mayor. By the Laws of *England* this Court hath power to Fine for Contempts.



S E C T. IV.

The Fining of that Jury that gave two contrary Verdicts Justified, to prevent a Failer of Justice in London.

IN regard that this is a Case, that very much concerns the King and Kingdom, and is now under the consideration of all the Judges, I shall only make four Remarks upon this Case, and leave the determination of the same to the Honourable Sages of our Law.

First Remark.

As Nature abhors a *Vacuum* in the Universe, so it is the Honour of our Law, that it will not suffer a *Failer* of Justice, according to that Maxim, *Ne curia Regis*

E

de-

deficeret in justitia exhibenda; therefore it is, that although our Law appoints all Trials to be by Juries, yet in six Cases cited by my Lord Coke, 1 p. *Instit.* sect. 102. fol. 74. the Trial is by Certificate only; and not by Jury. The first whereof Littleton speaketh of in section 102. *When a Man in time of War, is out of the Realm in the Kings Wars: As when a Lord distreineth his Tenant, that holdeth of him by service of a whole Knights Fee; and the Tenant pleadeth and will aver, That he was with the King in Scotland, &c. by forty days, and the Lord avers the contrary; it is said, That it shall be Tried by the Certificate of the Marshall of the Kings Host, in writing under his seal, which shall be sent to the Justices.*

The second Case is: *In times of Peace out of the Realm: As if it be alledged, in avoidance of an Outlawry, That the Defendant was in Prison at Bourdeaux; It shall be Tried by Certificate of the Mayor of Bourdeaux.*

The third Case is: *For Matters within the Realm: The Custome of London shall be certified by the Mayor and Aldermen, by the mouth of the Recorder.*

Vid. the other extraordinary Cases at large, in 1 part *Institutes*, sect. 102. fol. 74. The reason is, Because by Law they cannot be otherwise Tried. In like manner, Petty Jurors, that have given their Verdict contrary to their Evidence, have been Fined by the Justices, in Cases where the Law hath provided no other punishment, as by *Attaint*, &c.

Vid. Whartons Case, *Telverton* fol. 23. Noy reports the same fol. 48. and Judge Popham said, there were divers Presidents to that purpose, and cites divers, one by Justices in *Eire*.

Wats vers. *Brains*: In an Appeal, in *Banco Regis*: *Crooke* l. 3. 779.

Vid.

Vid. Leonard, l. 2. 132. pl. 175. & l. 3. 147. pl. 196.
Southwells Case in the Exchequer.

More, 730. pl. 1016. Lemnois Case in the Court of Wards.

Coke, l. 12. 23. Prices Case in the Star-Chamber. These Cases are all in Print.

Trin. 17. Car. II. in Banco Regis : Wagstaffs Case. This agrees with our present Case in all points.

Mich. 16. Car. II. in Banco Regis : Leech, and five others, being of the Jury, at Justice-Hall in the Old Baily, the last Sessions, refused to find certain Quakers Guilty, according to their Evidence; and upon that, they were bound to appear in the Kings Bench the first day of the next Term; they appeared accordingly, and the Court directed an Information to be brought against them, and upon that they were Fined.

So that it plainly appears, The Fining of Jurors that find contrary to their Evidence, is no Innovation, but always practiced, and that by as learned Judges, as ever England bred.

The second Remark.

If it be objected, That in the present Case, being an Indictment for a Trespass, an *Attaint* doth lie, and therefore ought to be punished in *Attaint*.

Answer. Brooke, Title, Attaint 130 saith, Et sic admittitur, qd si le Roy fuit merement Party, Attaint negit. Where the King is sole Party, Attaint doth not lie. In our present Case, the King is sole Party, and therefore by the old Law no Attaint doth lie.

Nota. Brookes was Chief-Justice in Henry the Eighths time, and a Reporter in Henry the Sevenths time, and therefore may well be presumed to know what the Common Law was in Case of Attaints, he living when the Statutes of the 11 Henry 7. cap. 21.

and the Statute of 23. H. 8. cap. 3. were made, by which Statutes in *Attaint*, in Cases betwixt party and party, the judgment was altered.

Because I am not willing to make mistakes by my construction of the Books, I will recite you the very words of the Year-Book, and of *Brookes* himself.

Mich. 20. H. 7. 6. pl. 16.

Attaint port p William Tay vers Henry Tust, sur faux serement in Bill sur lestatute de vicount p prendre argent de diuse homes encounter mesme le statute, (Coningesby) alledge en arrest q l'attaint negist pur ceo que Roy est party car Henry sue pur luy, et p le Roy: Et auxy le Record est Quod reddat H. T. 40 l. quas domino Regi & predicto Henrico debet. Illint party = Et auxy ne poit estre restore vs le Roy per Judgement icy, Mes Couient suer al Roy per petition? p q, &c. *Fairfax*; Le Roy nest party, Car si H. T. discontinue le suit, ou soit nonsue, ou release, l'action est determine vs le Roy, Et Coment q le Roy auoit le moyety recoüed, vncore ceo ne fuit le Roy party, Nient plus in Tris, ou forcible Entry ou autres actions ou le Roy aua fine, in quent Cases gist attaint assets bien p q, &c. Et l'attaint fuit dd, et remaine p default des Juroys.

Br. Attaint. 127. Nota dicitur q p Informaçon fait p le Roy que pas sur issue trie, le Roy ne l'informe n'aua attaint, car l'informe n'est plenemt party, et quant le Defendit ad respond, le Attozney le Roy reply p le Roy, et nul plus mention est puis del Informer, & ideo ne l'un ne l'auter n'aua attaint. 4 M. 1.

Attaint.

Attaint. 130. **Si** home pozt Bill Quod redd. T. 40. l. quas Domino Regi & pred. T. debet sur Stat. de 23 H. 6. c. 10. et le Jury passa vs le Defendit faurément, attaint gist p le Defendit, Car le Roy nest merement party, Car le party poit discontinue ou release sans le Roy, nient obstant q le Roy recoüa le moyety. Et ideo l'attaint fuit dd quod Nota. Et sic admittitur que si le Roy fuit merement party Attaint ne gist.

Fitz Herbert, Natura brevium, Title Attaint G. The Writ of Attaint lieth where false Verdict is given in a Court of Record, against the Plaintiff or Defendant, or against the Demandant or Tenant, in a Plea, real or personal, sued by Writ or by Bill; if the Debt or Damages do exceed 40 s. then he against whom the Verdict passed, shall have a Writ of Attaint, and the Writ shall be such; as is set down there, which is between Party and Party, vid. H.

Coke, l. 3. Instit. sect. 514. fol. 294. saith the same: Attincta, is a Writ that lieth where a false Verdict, in a Court of Record upon issue joyned betwixt Parties is given.

Nota. If these Definitions are true, an *Attaint* lieth only betwixt Party and Party: *Ergo*, Not in Indictments, &c.

It is agreed by all sides, That an *Attaint* lieth not in an Indictment of Treason, Murder, or Felony; much less in an Indictment of Trespas, which, in the Eye of the Law, is a far lesser Offence than them aforenamed.

Nota. At Common-Law no *Attaint* did lie in Action of Trespas before the Stat. 1 Edw. 3. cap. 6. And by the Statute 5 Edw. 3. cap. 7. it's Enacted; "That whereas it is contained in a Statute late made at *Westminster*, in the first Year of the Reign of Our Soveraigu Lord the King that now is, That *Attaints* shall be granted in Writs of Trespas: It is accorded and established, "That

“ That Writs of *Attaint* shall be from henceforth granted, as well
 “ in Pleas of Trespas moved without Writ, as by Writ before
 “ Justices of Record, if the Dammages judged, do pass 40 s.

Nota. If at the Common-Law no *Attaint* lay in Actions of
 Trespas, surely then no *Attaint* did lie in Indictments of Trespas,
 where there is no Dammages given, *à fortiori*.

The third Remark.

It is to be observed that the Common Law, as to *At-
 taints*, is altered since the *Statute* of the 23. H. 8. cap. 3.
 Doth not my Lord Coke upon *Littleton*, lib. 3. cap. 8.
sect. 514. affirm the same. “ And seeing, saith he, That
 “ all Trials of Real, Personal, and Mixt Actions depend
 “ upon the Oath of Twelve men, prudent Antiquity in-
 “ flicteth a strange and severe punishment upon them if
 “ they were attainted of Perjury. 1. *Quod amittat Libe-
 ram Legem in perpetuum.* 2. *Quod foris faciat omnia Bona
 & Catalla sua.* 3. *Quod Terræ & Tenementa in manus Do-
 mini Regis capiantur.* 4. *Quod Uxores & Liberi extra
 domus suus ejicerentur.* 5. *Quod Domus suæ prostrentur.*
 6. *Quod Arbores suæ extirpentur.* 7. *Quod Prata sua a-
 rentur.* 8. *Quod Corpora sua Carceri mancipentur.* So
 odious is this Perjury in the Eye of the Common Law.
 But since *Littleton* wrote, saith Coke, “ A Statute hath
 “ been made in mitigation of the Severity of the Com-
 “ mon Law, in case when the *Petite Jury* is attainted.

And it can never be proved that since that *Statute*,
 that ever any *Attaint* was maintainable at the Common
 Law. And I do hereby put the *Opponent* to prove two
 things.

1. That he produce a Case where an *Attaint* was
 brought in case of a *False Verdict* in an *Indictment* of
 Trespas,

Trespass, or that he can shew the Form of a *Writ of Attaint* for that purpose either in the *Register*, or *Natura Brevium*.

2. Let him instance a *Case* either in *Attaint* was maintained at *Common-Law* since that *Case*, & erit mihi magnus Apollo.

The fourth Remark.

It appears by the Proeme of the *Statute* made 11. H. 7. cap. 21. That no *Attaint* lay where *Jury* gave false Verdicts in *London*: vid. the *Statute*, which saith; *Whereas Perjury is much and customably used within the City of London, amongst such persons as passen and be impannelled on Issues joyned betwixt Party and Party in the Courts of said City, to the great Displeasure of Almighty God, and so to the Disinheritance and manifold Wrongs of the Kings Subjects; forasmuch as there is Enpannel in the same Inquests persons of little Substance, Discretion and Reputation, and also no Attaint, ne other sufficient punishment is for such Perjured persons before this time purveyed and ordained within the same City.*

So that that *Statute* and the *Statute* of the 23. H. 8. cap. 3. ordained *Perjury* of the *Jury-men*, to be punished by *Attaint* in the *Hustings Court* of *Common-Pleas* of *London* before the *Mayor* and six *Aldermen*.

Surely if *Attaint* lay not in *London* in *Actions* betwixt *Party and Party* before that time, *Attaints* likewise in *Indictments* could not lie. And this will be taken for granted by all men, unless our *Opponents* can otherwise make it appear, by one or more *Presidents*, That an *Attaint* was brought in *Banco Regis*, or in *Communi Banco* at *Westminster* (in which Courts only *Attaints* by the Com-

mon-Law are Sueable) for a false Verdict in London take
before the Mayor Aldermen, and Sher. ff. From the
four Rats. Iode nothing, but leave the Dete
mination. mon-Law. Affair to the Honourable
Sages of our and pray That in this, and in all
ther Busineses. Concernment, that God (the Gre
Judge of Heaven and Earth) would guide and direct
them.

FINIS.

Page 2. lin. 6. for *subvert*, read *subvert*. p. 10. r. Sir. John Robinson Knight
and Baronet.

Trespass, or that he can shew the Form of a *Writ of Attaint* for that purpose either in the *Register*, or *Natura Brevium*.

2. Let him instance a Case where an *Attaint* was maintained at *Common-Law* since that statute, & erit mihi magnus Apollo.

The fourth Remark.

It appears by the Proeme of the Statute made 11.H. 7. cap. 21. That no *Attaint* lay where *Juries* gave false Verdicts in *London*: vid. the Statute, which saith; *Whereas Perjury is much and customably used within the City of London, amongst such persons as passen and be impannelled upon Issues joyned betwixt Party and Party in the Courts of the said City, to the great Displeasure of Almighty God, and also to the Disinheritance and manifold Wrongs of the Kings Subjects; forasmuch as there is Enpannel in the same Inquests persons of little Substance, Discretion and Reputation, and also no Attaint, ne other sufficient punishment is for such Perjured persons before this time purveyed and ordained within the same City.*

So that that Statute and the Statute of the 23. H. 8. cap. 3. ordained *Perjury* of the *Jury-men*, to be punished by *Attaint* in the *Hustings Court* of *Common-Pleas* of *London* before the *Mayor* and six *Aldermen*.

Surely if *Attaint* lay not in *London* in Actions betwixt Party and Party before that time, *Attaints* likewise in *Indisputments* could not lie. And this will be taken for granted by all men, unless our Opponents can otherwise make it appear, by one or more Presidents, That an *Attaint* was brought in *Banco Regis*, or in *Communi Banco* at *Westminster* (in which Courts only *Attaints* by the Com-

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non-Law are Sueable) for a false Verdict in *London* taken before the *Mayor, Aldermen, and sheriffs*. From these four Remarks I conclude nothing, but leave the Determination of this important Affair to the Honourable Sages of our Law; and pray, That in this, and in all other Businesses of Concernment, that God (the Great Judge of Heaven and Earth) would guide and direct them.

F I N I S.



